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- 3- the species of Figure 8;
- 4 - the species of Figure 9;
- 5 - the species of Figure 10;
- 6 - the species of Figure 11,
- 7 - the species of Figure 12.

In response to the election requirement, Applicant provisionally elects, with traversal, Group 2 (i.e., Figures 5-7) and submits that claims 42-63 and 65-79 read upon Group 2. Applicant believes claims 42-63 and 65-79 read upon Groups 2-7. At least Claim 42 acts as a generic claim for Groups 2-7. Therefore, Applicant traverses the restriction requirement on several grounds and, pursuant to 37 CFR 1.143, Applicant requests the withdrawal or the reconsideration and modification of the election requirement.

First, under 37 CFR 1.142, the Examiner shall require the applicant to elect an invention if there are two or more independent and distinct inventions claimed. See MPEP 802.01. Here, Figures 2-12 are dependent (i.e., not independent) because there is an obvious and disclosed relationship between the subject of each figure. That is, each figure is connected in operation and/or effect. The effect here is that a gutter cover is clipped or held to a gutter. As §802.01 discusses, it has been held that dependent inventions may be properly divided from an application if they are distinct (i.e., it is not necessary to satisfy the requirement that the species be independent and distinct).

The term "distinct" means that two or more species are related but are capable of separate manufacture, use, or sale and are patentable over each other. Under this analysis, Applicant contends it is clear error to subdivide Figures 5-12 into separate groups. Examiner, upon reconsideration, will note that the illustrated embodiments of Groups 2-7 are NOT patentable over each other (novel or unobvious). At least one generic claim exists to cover the embodiments of Groups 2-7. Therefore, the Examiner's requirement should be reconsidered and modified. Applicant is willing to agree that Figures 2-4 are distinct from Figures 5-12.

Applicant would also point out that under MPEP § 803, in addition to being distinct, there must be a serious burden on the examiner in order to require the restriction. Applicant believes that there is no such burden on the Examiner to examine Groups 2-7 together. The Examiner must, at a minimum, establish a serious burden through a prima facie showing that the alleged groups would require a separate classification, separate status in the art, or a different field of search as defined in MPEP §808.02. The Examiner has not made such a prima facie showing for the Applicant to rebut.

Nevertheless, because the search and examination of Groups 2-7 can be made without serious burden, they should be examined together on the merits. Applicant submits that the subject matter of Groups 2-7 are sufficiently related such that a thorough search for the subject matter of any one group would

encompass a search for the subject matter of all groups. In fact, the claims covering Group 2 are thought to cover Groups 2-7. To avoid duplicative examination by the Patent Office and unnecessary delay and expense to the Applicant, Applicant respectfully requests examination on the merits of identified claims for Groups 2-7.

Applicant expressly admits that the illustrations in Groups 2-7 would be obvious over each other within the meaning of 35 U.S.C. §103. Therefore, a restriction between those grounds should not be required. In re Lee, 199 USPQ 108 (Comm'r Pat. 1978).

Based upon the above remarks, Applicant respectfully requests the restriction be withdrawn. In the alternative, the Applicant respectfully requests that the requirement be reconsidered and modified so as to create a single Group for the presently divided Groups 2-7.

The Commissioner is hereby authorized to charge any deficiencies in payment of fees associated with this communication or credit any overpayment to Deposit Account No. 50-2127.

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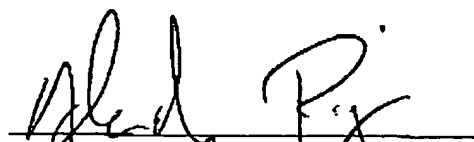
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Respectfully submitted,


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